

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

REPLY COMMENTS OF QWEST CORPORATION

Qwest Corporation (“Qwest”), through counsel and pursuant to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM” or “Notice”),<sup>1</sup> hereby submits our reply to comments filed in the above-captioned Section 11 proceeding on the continuation of ARMIS Service Quality Reporting.<sup>2</sup>

I. INTRODUCTION

Numerous parties including state regulatory commissions, consumer advocates, incumbent local exchange carriers (“LEC”), competitive local exchange carriers (“CLEC”), interexchange carriers (“IXC”) and other federal agencies and associations filed comments in the opening round of this proceeding. Many of these commentors made no reference at all to Section 11 or the standard of review that should guide biennial reviews, where the fundamental focus should be on the elimination of regulation for encumbered carriers. This failure led many commentors to argue that the existing ARMIS service quality reporting requirements should be

---

<sup>1</sup> In the Matter of 2000 Biennial Regulatory Review -- Telecommunications Service Quality Reporting Requirements, CC Docket No. 00-229, Notice of Proposed Rulemaking, FCC 00-399, rel. Nov. 9, 2000.

<sup>2</sup> In addition to submitting these reply comments, Qwest also concurs in the more detailed reply comments submitted by the United States Telecom Association (“USTA”).

maintained, as well as expanded to include additional criteria (such as items included in the NARUC White Paper<sup>3</sup> or reporting on broadband services)<sup>4</sup> or activities.<sup>5</sup>

State regulatory agencies were by far the most vocal in defending and proposing expansion of existing LEC service reporting requirements, while at the same time sometimes describing their own idiosyncratic service quality reporting regimes. Ignoring the mandate of Section 11, that the Commission find the regulation to be “necessary,” some commentators pressed the argument that “useful” information should continue to be reported.<sup>6</sup> Others, including small and rural LECs as well as CLECs and their representatives, argued that some or all of the existing ARMIS reporting requirements should be maintained for ILECs but not extended to them.<sup>7</sup>

---

<sup>3</sup> See Public Utilities Commission of Ohio (“Ohio Commission”) at 3; Public Service Commission of Wisconsin at 12-13. But see BellSouth Corporation and BellSouth Telecommunications, Inc. (“BellSouth”) at 11 (opposing such requirements on the grounds that Section 11 proceedings are confined to eliminating, not adding, regulations).

<sup>4</sup> See Association for Local Telecommunications Services (“ALTS”) at 10-11; Covad Communications Company (“Covad”) at 4; Earthlink, Inc. (“Earthlink”) at *passim*; Focal Communications Corporation at 4-5; General Services Administration at 10; Ohio Commission at 9-10 (proposing this additional reporting requirement while at the same time stating that it was “not attempting to impose additional regulatory requirements”); Public Utility Commission of Texas at 5-6. But see BellSouth at 7-8; SBC Communications Inc. at 6 (and noting that since some of this information is reported in a different report, no need could be demonstrated to provide it in an ARMIS report); and the USTA at 5 (all opposing such additional reporting requirements).

<sup>5</sup> See Indiana Utility Regulatory Commission (“Indiana”) at 3, 5 (proposing that audits be conducted with respect to the reported information).

<sup>6</sup> See National Association of Regulatory Utility Commissioners (or “NARUC”) at 3 (describing how information collected by the Commission had proven useful to the Tennessee Regulatory Authority and the Michigan Public Service Commission).

<sup>7</sup> Small/rural LECs taking this position include the National Telephone Cooperative Association (“NTCA”) at 3; Rural Local Exchange Carriers (“Rural LECs”) at 4; Bluestem Telephone Company, et al. at 4; Joint Comments of Competitive Telecommunications Association, et al. at 2-3; Vermont ITCs at 8. Others taking a similar position include ALTS at 12-14; Covad at 5-8; Dynege CLEC Communications at 2-3; Earthlink at 5.

In reviewing the comments and replies in this proceeding, the Commission cannot lose sight of Section 11 and its overall purpose -- to eliminate all unnecessary service reporting requirements that are currently imposed on LECs by the Commission's rules. This proceeding is not directed at determining which rules are "useful" to state regulatory agencies or what additional requirements may provide new information to the states or competitors. The purpose of this proceeding is to eliminate rules that the Commission finds to be "no longer necessary in the public interest."<sup>8</sup> In order to accomplish this the Commission must embrace both the spirit and the letter of Section 11 and abandon its traditional approach to reviewing regulatory requirements.<sup>9</sup>

II. THE COMMISSION HAS DETERMINED THAT IT SHOULD NOT IMPOSE NEW MORE BURDENSOME OBLIGATIONS IN A SECTION 11 BIENNIAL REVIEW

None of the commentors' proposals for expansion of the Commission's existing service quality reporting requirements have a place in a Section 11 Biennial Review (including those

---

<sup>8</sup> Section 11 of the Act contains two sections. The first directs the Commission to review all existing regulations and "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." The second section requires that the "Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161.

<sup>9</sup> Section 11 creates a presumption that existing rules are not necessary unless the Commission finds that they are. As Commissioner Furchtgott-Roth observed, "the Commission must affirmatively determine that a rule is necessary in the public interest; otherwise, it must be repealed or modified." See Furchtgott-Roth Comprehensive Report on FCC's Biennial Review Process, rel. Dec. 21, 1998 at 4-5 ("Furchtgott-Roth Report"). For this reason, NARUC is incorrect when it asserts that, in a Section 11 context, "before any cuts in current reporting are entertained, the large local phone companies should provide some explanation why such requirements should be trimmed." Specifically, the burden is on the LECs to make an "evidentiary showing that the current reporting levels cause significant burdens on the reporting carriers[.]" NARUC at 3-4 (quoting from a NARUC resolution). While the NARUC Resolution may not be absolutely in error with respect to all the contexts in which service quality reporting requirements may arise, their assessment of burdens of proof in a Section 11 context misses the mark.

pertaining to broadband services).<sup>10</sup> All such proposals for expanded service reporting requirements should be rejected as both contrary to -- and beyond the scope of -- a Section 11 proceeding.

Section 11 is clear on its face; and it neither contemplates nor allows the Commission to expand existing rules. In adopting Section 11, Congress directed the Commission to determine whether any of its rules were no longer necessary and to “repeal or modify” any rules that are “no longer necessary in the public interest.”<sup>11</sup> No reasonable interpretation of Section 11 would allow the Commission to expand its rules or to modify them in such a way that the burden on LECs would be increased.

The Commission inasmuch acknowledged this fact in its recent report on its 2000 Biennial Regulatory Review (“Report”) and stated that it had no intention of increasing burdens in a biennial review:

Thus, as part of the biennial review process, we do not intend to impose new obligations on parties in lieu of current ones, unless we are persuaded that the former are less burdensome than the latter and are necessary to protect the public interest.<sup>12</sup>

The Commission’s Report makes it clear that any party proposing new or modified rules, rather than elimination of service reporting requirements has a significant burden of proof and must demonstrate that the proposed modifications do not increase regulatory burdens on LECs.<sup>13</sup>

While Qwest has always been of the opinion that LEC service reporting requirements could not lawfully be expanded in a Section 11 Biennial Review, the Commission’s Report

---

<sup>10</sup> See notes 3 and 4, *supra*.

<sup>11</sup> 47 U.S.C. § 161.

<sup>12</sup> In the Matter of 2000 Biennial Regulatory Review, Report, CC Docket No. 00-175, rel. Jan. 17, 2001 at 7 (2001 FCC LEXIS 249).

should remove all doubt. This should allow Commission staff to significantly narrow their inquiry in this proceeding and discard all requests for additional service reporting requirements, no matter how well intended. Not only would such a narrow inquiry serve the purposes of Section 11, it would also make the most efficient use of the Commission's limited resources.

### III. MOST COMMENTING PARTIES FAIL TO IDENTIFY ANY STANDARD FOR DETERMINING "REGULATORY NECESSITY" UNDER SECTION 11

In their quest to maintain and increase regulatory burdens on LECs, commentators all but ignore the language of Section 11 and the need for a standard for determining "regulatory necessity." Both the Commission's Report and Commissioner Furchtgott-Roth's earlier Report addressed the issue of establishing standards for evaluating existing rules<sup>14</sup> in a Section 11 review.<sup>15</sup> In the absence of a standard, it is all but impossible to engage in reasoned decision-making and for any subsequent Commission order to withstand judicial scrutiny.

In our opening Comments, Qwest argued the need for a standard under which Section 11 reviews would be conducted.<sup>16</sup> As a predicate matter, the Commission would be required to identify a federal interest associated with the rule under consideration. If such an interest could be identified, then other matters/factors needed to be addressed in determining the "federal

---

<sup>13</sup> Thus, those commentators who would argue that the LECs bear the burden of proof on this matter are in error. See note 9, supra.

<sup>14</sup> The Commission discussed the need for consistent analysis in determining whether Commission rules needed to be modified or eliminated. It also indicated that it expected to take into account the four criteria used by Commission staff in evaluating existing rules. See Report at 2.

<sup>15</sup> In his 1998 Report on the implementation of Section 11, Commissioner Furchtgott-Roth emphasized the need to adopt, *a priori*, and apply uniform principles in making a public interest determination under Section 11.

<sup>16</sup> Qwest Comments at 9-14.

necessity” for the continued rule.<sup>17</sup> Regardless of whether the Commission adopts Qwest’s proposed standard, it is clear the Commission must adopt and apply a consistent analytical standard/methodology, if it is to successfully complete its biennial review of service quality reporting requirements.

The fact that most commenting parties ignore the need for establishing a standard to determine which rules are “no longer necessary in the public interest” should not stop the Commission from doing so. Many times, the parties have no interest in promoting a Section 11 Biennial Review structured along the lines required by Congress (which would result in reduced and eliminated regulations). Rather, their interests lie in either maintaining the *status quo* or expanding existing requirements.

#### IV. CONCLUSION

This proceeding represents an opportunity for the Commission both to comply with the dictates of Section 11 and to lift the burden of unnecessary and costly service quality reporting requirements from large incumbent LECs. Qwest urges the Commission to take a “fresh look” at its current rules by establishing a reasonable standard for what is “necessary” in today’s competitive price cap environment<sup>18</sup> and eliminating all rules that do not meet this threshold test.

---

<sup>17</sup> The particular “model” for addressing these factors could take various forms. Qwest referenced both the Framework model drafted by the Office of Plans and Policy which was referenced in Commissioner Furchtgott-Roth’s Report (at Appendix D), as well as a model proposed by the Commissioner himself. See Qwest Comments at 11-13 and n.27.

<sup>18</sup> In our Opening Comments, Qwest identified evidence of competition in the interstate arena. See Id. at 6 and n.15. In addition to that evidence, the Commission’s recent granting of BellSouth’s petition for additional pricing flexibility (finding that BellSouth had satisfied the competitive thresholds in numerous metropolitan areas) further supports a finding of meaningful competition between providers of services. See In the Matter of BellSouth Petition for Pricing Flexibility for Special Access and Dedicated Transport Services, Memorandum Opinion and Order, CCB/CPD No. 00-20, DA 00-2793, rel. Dec. 15, 2000 (2000 FCC LEXIS 6659), applications for review pending, (Public Notice, DA 01-209, CC Docket No. 01-22, rel. Jan 29, 2001).

Respectfully submitted,

QWEST CORPORATION

By: Kathryn Marie Krause

Sharon J. Devine  
Kathryn Marie Krause  
James T. Hannon  
Suite 700  
1020 19th Street, N.W.  
Washington, DC 20036  
(303) 672-2859

Its Attorneys

February 16, 2001

---

Furthermore, the fact that the Commission has found that Regional Bell Operating Companies have satisfied Section 271 requirements (i.e., demonstrating that local markets are open to competitors) in four states is even further evidence of the existence of competition. See In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, 15 FCC Rcd. 18354 (2000); In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd. 3953 (1999), aff'd, AT&T Corp. v. FCC, 220 F.3d 607 (D.C. Cir. 2000); In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, rel. Jan. 22, 2001.

## CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused 1) the foregoing **REPLY COMMENTS OF QWEST CORPORATION** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a copy of the **REPLY COMMENTS** to be served, via First Class United States Mail, postage prepaid, upon the persons/entity listed on the attached service list.\*

Richard Grozier  
Richard Grozier

February 16, 2001

---

\*Service via hand delivery



\*Michael K. Powell  
Federal Communications Commission  
8<sup>th</sup> Floor  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

\*Gloria Tristani  
Federal Communications Commission  
8<sup>th</sup> Floor  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

\*Susan P. Ness  
Federal Communications Commission  
8<sup>th</sup> Floor  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

\*Harold Furchtgott-Roth  
Federal Communications Commission  
8<sup>th</sup> Floor  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

\*Dorothy T. Attwood, Chief  
Common Carrier Bureau  
Federal Communications Commission  
5<sup>th</sup> Floor  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Ernestine Creech  
Accounting Safeguards Division  
Federal Communications Commission  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

International Transcription  
Services, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, DC 20036

Kimberly M. Kirby  
Jonathan Askin  
Association for Local Telecommunications  
Services  
Suite 900  
888 17<sup>th</sup> Street, N.W.  
Washington, DC 20006

Mark C. Rosenblum  
Richard H. Rubin  
James W. Grudus  
AT&T Corp.  
295 North Maple Avenue  
Basking Ridge, NJ 07920

James L. Casserly  
Mintz, Levin, Cohen, Glovsky and Popeo, PC  
701 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Richard M.Sbaratta  
Stephen L. Earnest  
BellSouth Corporation  
Suite 4300  
675 West Peachtree Street, N.E.  
Atlanta, GA 30309

Bluestem Telephone Company;  
Rural Local Exchange Carriers,  
& Vermont ITCs  
c/o Susan J. Bahr, PC  
POB 86089  
Montgomery Village, MD 20886-6089

Genevieve Morelli  
David C. Kirschner  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W.  
Washington, DC 20036

Jason Oxman  
Covad Communications Company  
600 14<sup>th</sup> Street, N.W.  
Washington, DC 20005

David N. Baker  
EarthLink, Inc.  
Suite 400  
1430 West Peachtree Street, N.W.  
Atlanta, GA 30309

Donna N. Lampert  
Mark J. O'Connor  
Lampert & O'Connor, PC  
Suite 600  
1750 K Street, N.W.  
Washington, DC 20006

Richard Metzger  
Pamela Arluk  
Focal Communications Corporation  
Suite 850 N  
7799 Leesburg Pike  
Falls Church, VA 22043

George N. Barclay  
Michael J. Ettner  
General Services Administration  
Room 4002  
1800 F Street, N.W.  
Washington, DC 20405

Snively King Majoros O'Connor & Lee, Inc.  
Suite 410  
1220 L Street, N.W.  
Washington, DC 20005

Myra Karegianes  
Sarah A. Naumer  
Thomas G. Aridas  
Illinois Commerce Commission  
Suite C-800  
160 N. LaSalle  
Chicago, IL 60601

David W. Zesiger  
The Independent Telephone & Telecommunications  
Alliance  
Suite 600  
1300 Connecticut Avenue, N.W.  
Washington, DC 20036

Karen Brinkmann  
Richard R. Cameron  
Benoit Jacqmotte  
Latham & Watkins  
Suite 1300  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Indiana Utility Regulatory Commission  
Indiana Government Center South  
Suite E306  
302 West Washington Street  
Indianapolis, IN 46204

David Svanda  
Robert Nelson  
Michigan Public Service Commission  
6545 Mercantile Way  
Lansing, MI 48911

James Bradford Ramsay  
Sharla Barklind  
National Association of Regulatory Utility  
Commissioners  
Suite 200  
1101 Vermont Avenue, N.W.  
Washington, DC 20005

Kathleen F. O'Reilly  
National Association of State Consumer  
Utility Advocates  
414 "A" Street, S.E.  
Washington, DC 20003

Michael J. Travieso  
Maryland Office of People's Counsel  
Suite 2102  
6 St. Paul Street  
Baltimore, MD 21201

L. Marie Guillory  
Daniel Mitchell  
R. Scott Reiter  
National Telephone Cooperative Association  
10<sup>th</sup> Floor  
4121 Wilson Boulevard  
Arlington, VA 22203

Betty Montgomery  
Duane Luckey  
Jodi Jenkins Bair  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215-3793

Public Utility Commission of Texas  
POB 13326  
1701 N. Congress Avenue  
Austin, TX 78711-3326

Paul E. Dorin  
Roger K. Toppins  
Paul Mancini  
SBC Communications Inc.  
Room 1100  
1401 I Street, N.W.  
Washington, DC 20005

R. Russell Miller  
Siemens Medical Solutions  
Health Services Corporation  
51 Valley Stream Parkway  
Malvern, PA 19355

Jay C. Keithley  
Sprint Corporation  
Suite 400  
401 9<sup>th</sup> Street, N.W.  
Washington, DC 20004

Rick Zucker  
Sprint Corporation  
6360 Sprint Parkway  
Overland Park, KS 66251

Lawrence E. Harris  
Terri B. Natoli  
Edward B. Krachmer  
Teligent, Inc.  
Suite 400  
8065 Leesburg Pike  
Vienna, VA 22182

Larry E. Sarjeant  
Linda L. Kent  
Keith Townsend  
United States Telecom Association  
Suite 600  
1401 H Street, N.W.  
Washington, DC 20005

Alan Buzacott  
WorldCom, Inc.  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Steve Ellenbecker  
Wyoming Public Service Commission  
Suite 300  
Hansen Building  
2515 Warren Avenue  
Cheyenne, WY 82002

Linda L. Dorr  
Public Service Commission of Wisconsin  
610 North Whitney Way  
Madison, WI 53705

Richard H. Levin  
Advanced TelCom Group, Inc.  
Second Floor  
110 Stony Point Road  
Santa Rosa, CA 95401

